

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF ROCHE AZAÑA ET AL. v. NICARAGUA

JUDGMENT OF NOVEMBER 18, 2020

(Interpretation of the Judgment on Merits and Reparations)

In the case of *Roche Azaña et al. v. Nicaragua*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

pursuant to Article 67 of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") and Article 68 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), decides on the requests for interpretation of the Judgment on Merits and Reparations issued by this Court on June 3, 2020 in this case (hereinafter "the Judgment"), filed, respectively, on July 28, 2020 and August 7, 2020, by the victims' representative (hereinafter "the victims' representative" or "the representative") and the Republic of Nicaragua (hereinafter "the State" or "Nicaragua").

I

REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On June 3, 2020, the Inter-American Court issued the Judgment in this case, which was notified to the parties and to the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on June 24, July of the same year.
2. On July 28, 2020, the victims' representative submitted to the Court a request for interpretation in relation to two aspects of the compensation ordered in the reparations section of the Judgment, namely: (i) compensation for loss of income or earnings corresponding to Patricio Fernando Roche Azaña and (ii) the specific amount to be delivered to María Angelita Azaña Tenesaca for lost earnings.
3. Furthermore, on August 7, 2020, the State submitted a request to the Court for interpretation related to (i) the participation of members of the Nicaraguan Army in the police

operation referred to in the proven facts of the Judgment and (ii) the meaning and scope of the eighth operative paragraph of the Judgment, which orders the State to create and implement "a training plan for members of the Nicaraguan National Police and the Nicaraguan Army on international standards regarding the use of force, as well as with respect to international standards for the protection of the rights of people in the context of mobility".

4. On August 26, 2020, following instructions from the President of the Court, the Secretariat of the Court sent the aforementioned communications to the parties and the Inter-American Commission, granting them until September 24, 2020 to present their written observations.

5. On September 21 and 24, 2020, the State and the Inter-American Commission, respectively, presented their written observations regarding the aforementioned requests for interpretation. The victims' representative did not submit written observations.

II JURISDICTION

6. Article 67 of the Convention establishes that:

[t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

7. Pursuant to the cited article, the Court is competent to interpret its judgments. In order to examine the request for interpretation and to decide in respect of this matter, the Court must, whenever possible, be composed of the same judges who delivered the corresponding judgment, in accordance with Article 68(3) of the Rules of Procedure. On this occasion, the Court is composed of the same judges who delivered the Judgment, interpretation of which has been requested¹.

III ADMISSIBILITY

8. It is the responsibility of the Court to verify whether the requests presented by the representative and the State meet the requirements established in the norms applicable to a request for interpretation of Judgment, namely, Article 68 of the Rules of Procedure. Similarly, Article 31(3) of the Rules of Procedure establishes that "[j]udgments and orders of the Court may not be contested in any way."

9. The Court notes that the representative and the State presented their request for interpretation of the Judgment on July 28 and August 17, 2020, respectively, that is, within the period of ninety days established in Article 67 of the Convention, given it was notified to the parties and to the Commission on July 24, 2020. Therefore, both requests are admissible with regard to the deadline for their submission. Regarding other requirements, the Court will carry out the respective analysis when examining the content of said requests in the following chapter.

IV ANALYSIS OF THE VALIDITY OF THE REQUESTS FOR INTERPRETATION

¹ Owing to the exceptional circumstances arising from the COVID-19 pandemic, this judgment was deliberated and adopted during the 138th regular session, held virtually, as established in the Court's Rules of Procedure.

10. The Court will analyze below the requests of the representative and the State to determine whether, according to the regulations and standards developed in its jurisprudence, it is appropriate to clarify the meaning or scope of any point of the Judgment.

11. The Court has indicated that a request for interpretation of judgment cannot be used as a means of challenging the decision whose interpretation is requested. The purpose of said request is exclusively to determine the meaning of a ruling when one of the parties maintains that the text of its operative paragraphs or its considerations lacks clarity or precision, as long as those considerations affect said operative paragraphs.² Therefore, the modification or annulment of the respective judgment cannot be sought through a request for interpretation.³

12. Additionally, the Court has upheld the inadmissibility of using a request for interpretation to submit considerations on matters of fact and law already raised at the procedural opportunity and on which the Court has already adopted a decision⁴, nor to seek that the Court again assess matters already decided in the Judgment⁵. Similarly, this avenue cannot be used to attempt to broaden the scope of a reparation measure ordered in a timely manner⁶.

13. The Inter-American Court will examine the matters raised in the following order: (i) the representative's request regarding the scope of the compensation determined in the Judgment for lost earnings and (ii) the State's request regarding the participation of members of the Army in the facts declared proven in the Judgment, as well as the meaning and scope of the eighth operative paragraph of said Judgment.

A. Scope of the compensation determined in the Judgment for loss of income

14. The Court will first address the representative's request regarding the scope of compensation for loss of income granted to María Angelita Azaña Tenesaca, followed by the request for clarification regarding the compensation for lost earnings corresponding to Patricio Fernando Roche Azaña.

A.1. Scope of the compensation for loss of earnings granted to María Angelita Azaña Tenesaca

A.1.a) Arguments of the parties and of the Commission

² Cf. *Case of Loayza Tamayo v. Perú. Interpretation of the Judgment on Merits*. Judgment of the Court of March 8, 1998. Series C No. 47, para. 16, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB- SUNAT) v. Peru. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*. Judgment of October 8, 2020. Series C No. 413, para. 10.

³ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the Judgment on Merits*, *supra* note 1, para. 16, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB- SUNAT) v. Peru. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*, *supra*, para. 10.

⁴ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the Judgment on Reparations and costs*, *supra*, para. 15, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB- SUNAT) v. Peru. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*, *supra*, para. 11.

⁵ Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of the Judgment on Reparations and costs*. Judgment of August 29, 2011. Series C No. 230, para. 30, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB- SUNAT) v. Peru. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*, *supra*, para. 11.

⁶ Cf. *Case of Escher et al. v. Brazil. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2009. Series C No. 208, para. 11, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB- SUNAT) v. Peru. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*, *supra*, para. 11.

15. The **representative** referred to paragraph 129 of the Judgment, which determined that the loss of income caused by the death of Pedro Bacilio Roche Azaña was USD \$ 50,000.00 (fifty thousand United States dollars), an amount that should be delivered to José Fernando Roche Zhizhingo and María Angelita Azaña Tenesaca. In this regard, the representative requested that the Court clarify whether said amount was determined for each of the beneficiaries, or, on the contrary, was a sum that should be divided between both beneficiaries.

16. The **Commission** considered that said paragraph 129 could “be open to various interpretations” and therefore concluded that the request filed by the representative was appropriate.

17. The **State**, for its part, observed that the Court determined “in an intelligible manner” in the aforementioned paragraph 129 that said sum of money amounted to USD \$ 50,000.00 (fifty thousand United States dollars), to be delivered in full to María Angelita Azaña Tenesaca, and asked that the request be denied as inadmissible.

A.1.b) Considerations of the Court

18. The Court considers it pertinent to clarify the meaning of the reparation measure ordered in the eighth operative paragraph, in relation to paragraph 129 of the Judgment, in which the Court determined the following:

129. Regarding the loss of income caused by the death of Pedro Bacilio Roche Azaña, the Court estimates that the State must deliver, in equity, the total sum of USD \$ 50,000 (fifty thousand United States dollars) to José Fernando Roche Zhizhingo and María Angelita Azaña Tenesaca. In view of the fact that José Fernando Roche Zhizhingo has already passed away, the corresponding amount must be delivered to María Angelita Azaña Tenesaca.

19. The Court recalls that the parties must carry out a comprehensive reading of the Judgment and should not consider each paragraph of the judgment as if it were independent from the rest.⁷ In this sense, from the joint reading of paragraphs 128, 129 and 136, it follows that, unlike the compensation indicated in paragraphs 128 and 136, where the amount for consequential damages must be delivered, “respectively”, to each of the indicated victims, in paragraph 129 reference is made to a “total” sum that must be paid to two people, José Fernando Roche Zhizhingo and María Angelita Azaña Tenesaca. Said paragraph also specifies that, as José Fernando Roche Zhizhingo has already passed away, the amount that would correspond to him, that is, half of the total amount set, must be delivered to María Angelita Azaña Tenesaca.

20. Consequently, the Court considers it pertinent to clarify that the State must deliver the entire amount of USD \$ 50,000.00 (fifty thousand United States dollars) established as lost earnings to María Angelita Azaña Tenesaca.

A.2. Compensation for loss of income to Patricio Fernando Roche Azaña

A.2.a) Arguments of the parties and of the Commission

21. The **representative** noted that the Judgment in this case did not specifically rule on the compensation for lost earnings that should be awarded to Patricio Fernando Roche Azaña. In this

⁷ Cf. *Case of Pollo Rivera et al. v. Peru. Request for Interpretation of the Judgment on Merits, reparations and costs.* Judgment of May 25, 2017. Series C No. 335, para. 26, and *Case of Alvarado Espinoza et al. v. Mexico. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs.* Judgment of August 30, 2019. Series C No. 381, para. 18.

regard, it asked the Court to clarify whether or not Mr. Roche Azaña is entitled to said compensation, in which case the Court should determine the corresponding amount.

22. The **Commission** considered that the Court should determine whether the loss of income ordered in the Judgment "is considered in relation to the effects suffered by Patricio Fernando Roche Azaña."

23. The **State**, for its part, opposed the request made by the representative, as the representative intended to "reopen a debate that was fully discussed and considered by this Court" on the compensation for lost earnings established by the Court.

A.2.b) Considerations of the Court

24. The Court observes that paragraphs 128 and 129 of the Judgment clearly establish the amounts that the State must pay to the victims for pecuniary damage. Furthermore, the Court ordered the payment, in equity, of USD \$5,000.00 (five thousand United States dollars) to Patricio Fernando Roche Azaña, his father José Fernando Roche Zhizingo and his mother María Angelita Azaña Tenesaca, as consequential damages⁸. Additionally, the Court also ordered the payment of USD \$ 50,000.00 (fifty thousand United States dollars) in equity to the parents of the Roche Azaña brothers as lost earnings.⁹ The Judgment expressly indicates that said amount must be delivered for "the death of Pedro Bacilio Roche Azaña" and does not make any reference to any other additional amount that should be delivered to another victim for the same or another concept.

25. In view of the above, the Court considers that the consultation made by the representative does not correspond to the assumptions of interpretation established in Article 67 of the Convention, as it does not refer to the meaning or scope of the judgment, but rather reflects the willingness of the representative to order an additional amount for loss of income for another victim in this case, Patricio Fernando Roche Azaña, a matter that the Court has already evaluated and considered in the Judgment, concluding that only compensation for lost earnings for the death of Pedro Bacilio Roche Azaña should be made.¹⁰ The Court also recalls that the request for interpretation of the Judgment cannot have the objective of expanding the scope of a reparation ordered in a timely manner.¹¹

26. Consequently, the Court considers that the compensation ordered by the Court for loss of income is sufficiently clear and precise and that the representative's request for interpretation is incompatible with its objective, as it seeks to extend it. Due to the foregoing, this Court concludes that the representative's request is inadmissible in this regard.

B. Participation of members of the Army in the facts declared proven in the Judgment

B.1. Arguments of the parties and of the Commission

27. The **State** requested that the Court define the meaning and scope of the Court's determinations in paragraphs 51, 57 and 65 of the Judgment, as well as in the eighth operative paragraph of the same. In particular, the State alleged that the Court considered the participation of active military personnel of the Nicaraguan Army as proven in the events that resulted in the

⁸ Paragraph 128 of the Judgment.

⁹ Paragraph 129 of the Judgment.

¹⁰ *Idem*.

¹¹ Cf. *Case of Escher et al. v. Brazil. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2009. Series C No. 208, para. 11, and *Case of Alvarado Espinoza et al. v. Mexico. Interpretation of the Judgment on merits, reparations and costs, supra*, para. 25.

death of Pedro Bacilio Roche Azaña and the injuries caused to his brother Patricio Fernando Roche Azaña. According to the State, neither the Commission nor the representative alleged that Army personnel on active duty participated in said operation. It added that the Convention does not authorize the Court to "vary the factual basis in the terms that were requested by the [Commission] and the representative of the victim[s]." The State argued that, according to the "Nicaraguan linguistic idiosyncrasy and [its] history," the expression "military" that appeared in the file before the Court and, in particular, in the complaint of April 18, 1996¹² and the Order of imprisonment of May 6, 1996¹³ alludes, indiscriminately, to members of the National Police or the Nicaraguan Army. It added that the fact that the aforementioned documents referred to the word "military" was due to a "lapsus linguae", since in the context of the facts declared proven in this Judgment it is "inferred" that the expression "military" was used "to refer to the members of the National Police who intervened in the police operation."

28. In view of the above, the State asked the Court to specify the meaning and scope of the provisions of the eighth operative paragraph and paragraphs 51, 57 and 65 of the Judgment, in order to clarify "the unfounded point" about the participation of members of the Army in the operation that resulted in the death and injuries caused to the victims in this case. Additionally, in the application for its request for interpretation, the State requested that the Court delete the mention of active military personnel of the Nicaraguan Army in paragraphs 51, 57 and 65 of the Judgment, as well as in the eighth operative paragraph.

29. The **Commission** considered that in this case the Court determined, based on the evidence in the file, that at least one military member participated in the events that led to the death of Pedro Bacilio Roche Azaña and the injuries caused to his brother Patricio Fernando, and five other people. In addition, it recalled the Court's indications that "a request for interpretation of a judgment cannot be used as a means of challenging the decision whose interpretation is required." In view of the foregoing, the Commission considered that the request presented by the State exceeds the object of the Court's interpretative power and was, therefore, inadmissible.

B.2. Considerations of the Court

30. The Court considers that the consultation made by the State does not meet the assumptions of interpretation established in Article 67 of the Convention, since it does not refer to the meaning or scope of the ruling, but rather to a new analysis of the evidence based on new allegations made by the State in this procedural process. In effect, the Court determined in paragraphs 31, 51, 57 and 65 of the Judgment that at least one military member participated in the events that resulted in the death of Pedro Bacilio Roche Azaña and the injuries caused to his brother Patricio Fernando. The above is the result of the evidential assessment carried out by the Court on the body of evidence in this case and, in particular, on the Order of imprisonment, issued by the First District Criminal Court, of May 6, 1996, as well as the recorded statements made before the National Police, documents in which an explicit reference is made to the term "military".

31. This Court recalls the inadmissibility of using a request for interpretation to submit questions on which it has already decided,¹⁴ nor can it be used as a means of challenging the

¹² Cf. Complaint filed by J.S.O.N., on April 18, 1996 (evidence file, folios 836 and ff.).

¹³ Cf. Order of imprisonment, issued by the First District Criminal Court, on May 6, 1996 (evidence file, folios 3279 and ff.).

¹⁴ Cf. *Case of Loayza Tamayo v. Peru, Interpretation of the Judgment on reparations and costs*, supra note 3, para. 15, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB- SUNAT) v. Peru. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*, supra, para. 11.

same.¹⁵ Accordingly, the Court notes that, under the guise of a request for interpretation, the position of the State shows a discrepancy with that which has been considered, decided and ordered by the Court, as what is intended is a modification of the facts proven in the Judgment, as well as the measure ordered in the eighth operative paragraph, issues outside the scope of Article 67 of the Convention.

32. In view of the above, this Court considers that the State's request is inadmissible.

V OPERATIVE PARAGRAPHS

33. Therefore,

THE COURT,

in accordance with Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of the Rules of Procedure,

DECIDES

Unanimously,

1. To declare as admissible the requests for interpretation of the Judgment on Merits and Reparations, issued in the case of Roche Azaña et al. v. Nicaragua, presented by the representative of the victims and the State pursuant to paragraph 9 of this Judgment of Interpretation.
2. To clarify by interpretation the Judgment on Merits and Reparations, issued in the case of Roche Azaña et al. v. Nicaragua, pursuant to paragraphs 19 and 20 of this Judgment of Interpretation.
3. To reject as inadmissible the request for interpretation of the Judgment on Merits and Reparations issued in the case of Roche Azaña et al. v. Nicaragua, presented by the representative of the victims, pursuant to paragraphs 24 to 26 of this Judgment of Interpretation.
4. To reject as inadmissible the request for interpretation of the Judgment on Merits and Reparations issued in the Roche Azaña et al. v. Nicaragua case, presented by the State, pursuant to paragraphs 30 to 32 of this Judgment of Interpretation.
5. To order that the Secretariat of the Court notify this Judgment of Interpretation to the Republic of Nicaragua, to the victims' representative, and to the Inter-American Commission on Human Rights.

¹⁵ Cf. *Case of Loayza Tamayo v. Peru Interpretation of the Judgment on reparations and costs*, supra note 3, para. 16, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB- SUNAT) v. Peru. Interpretation of the Judgment on Preliminary objections, merits, reparations and costs*, supra, para. 10.

I / A Court HR. Case of *Roche Azaña et al. v. Nicaragua*. Interpretation of Judgment on Merits and reparations. Judgment of November 18, 2020. Judgment adopted in San José, Costa Rica in a virtual session.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary